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Facsimile: (415) 434-0882

5 Attorneys for Defendants
Cornell Corrections of California, Inc., erroneously
6 served and sued herein as Cornell Corporation, Inc.,
Maria Richard, Mike Reed, Dora Ford, Judith
Henderson, Melody Daniel, and Rose Hughes

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT COURT OF CALIFORNIA

Defendants respectfully submit the following Opposition to plaintiff's Motion to Remand, Memorandum of Points and Authorities in support thereof and accompanying Declaration.

23 Plaintiff's Motion to Remand should be denied on the following grounds:

24 (1) This is a civil action in which this Court has original jurisdiction pursuant to 28 U.S.C.
25 § 1332 and one which may be removed to this Court pursuant to 28 U.S.C. § 1441(b) in that it is
26 based on federal law.

1 (2) A related case is already pending under this Court's federal jurisdiction, as such both
2 cases should properly be before the federal court. *Walton v. UTV*, 776 F.Supp. 1399 (1991 N.D.
3 Cal.).

4 (3) Plaintiff's indigent status has no effect on his ability to litigate in federal court.

5 (4) Defendants' removal was timely under the "last served" rule. *Ford v. New United*
6 *Motors Manufacturing, Inc.*, 857 F.Supp. 707 (N.D. Cal. 1994).

7 (5) Defendants' followed proper removal procedures. 28 U.S.C. § 1446(a).

8 **I. INTRODUCTION**

9 On January 4, 2007, an action was commenced in the Northern District of the U.S. District
10 Court, entitled Rosenberg v. Cornell Corporation Inc., et. al., Case No. C07-00037-MJJ, a copy of
11 which is attached as **EXHIBIT "A"**. The complaint was not served on any defendant.

12 On January 17, 2007, an action was commenced in the Superior Court of the State of
13 California, in and for the County of San Francisco, entitled Jordan Rosenberg v. Cornell
14 Corporation, Inc., et al., Case No. CGC-07-459757, a copy of which is attached as **EXHIBIT "B"**.
15 The complaint was not served on any defendant. On May 15, 2007, plaintiff Jordan Rosenberg
16 filed a first amended complaint in the above state court action, a copy of which is attached as
17 **EXHIBIT "C"**. Defendant Maria Richard was personally served with summons and the first
18 amended complaint on August 6, 2007; defendant Cornell Corrections of California, Inc.,
19 erroneously served and sued herein as Cornell Corporation, Inc., was improperly served with
20 the same documents on August 6, 2007; and defendants Mike Reed, Dora Ford, Judith Henderson,
21 Melody Daniel, and Rose Hughes were served with the same documents by substituted service on
22 August 14, 2007. A copy of the summons served by substituted service on defendant Rose Hughes
23 is attached as **EXHIBIT "D"**.

24 On September 12, 2007, defendants submitted a Notice of Removal. On September 13,
25 2007 defendants answered plaintiff's first amended complaint. Plaintiff filed a Motion to Remand
26 on November 11, 2007. Defendants now submit their Opposition to plaintiff's Motion for
27 Remand.

28

1 **II. ARGUMENTS**2 **A. THIS COURT HAS ORIGINAL JURISDICTION OVER BIVENS ACTIONS
3 ARISING FROM VIOLATIONS UNDER THE US CONSTITUTION,
4 FEDERAL LAW, AND FEDERAL REGULATIONS**

5 This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §
 6 1332 and one which may be removed to this Court pursuant to 28 U.S.C. § 1441(b) in that it is
 7 based on federal law, e.g., the first amended complaint alleges “a ‘Bivens’ action, aris[ing] in part
 8 from violations of plaintiff’s rights under the US Constitution, federal law, and federal regulations.
 9 (*Bivens v. Six unknown fed. Narcotics agents*, 403 U.S. 388 (1971).” See first amended complaint,
 2:10-12, **EXHIBIT “C”**.

10 Removal to the San Francisco division of the Northern District of California is proper
 11 under 28 U.S.C. § 1441(a) because it is the district and division in which the state court action was
 12 commenced and is pending. Removal to the San Francisco division or the Oakland division is also
 13 proper under Northern District Court Local Rules 3-2 and 3-5.

14 Plaintiff asserts in his Motion to Remand that this Court ruled, in an order of 1/4/07, that
 15 there was no subject matter jurisdiction in case number C07-00037-MJJ, which plaintiff asserts
 16 raised the same allegations as this case, against the same defendants. See first amended complaint,
 17 2:13-16, **EXHIBIT “C”**. Defendants have not been served in case number C07-00037-MJJ and
 18 were not aware of its existence until plaintiff filed his Motion to Remand. See Declaration of
 19 Robert A. Ford. The existence of case C07-00037-MJJ, however, does not bar defendants from
 20 asserting that this Court has proper subject matter jurisdiction over case number CV 07-4690 PJH.

21 Plaintiff clearly asserts a ‘Bivens’ cause of action against defendants in this pending case
 22 and as such, this Court has proper subject matter jurisdiction over plaintiff’s claims under federal
 23 law. See *Bivens v. Six unknown fed. Narcotics agents*, 403 U.S. 388 (1971).

24 **B. PLAINTIFF CANNOT SPLIT UP A CLAIM THAT HE HAS AGAINST
25 MULTIPLE DEFENDANTS BY MAKING IT THE SUBJECT OF MORE
26 THAN ONE ACTION**

27 Plaintiff asserts that removal is improper based on *Walton v. UTV*, because “well
 28 established federal and California law forbid plaintiff from splitting a single claim for relief
 against defendants by making it the subject of more than one action in the same court.” *Walton v.*

1 *UTV*, 776 F.Supp. 1399 (1991 N.D. Cal). Plaintiff improperly cites *Walton* as a basis for granting
 2 his remand, when in fact, *Walton* supports removal to this Court and consolidation with plaintiff's
 3 previously filed case (C07-00037-MJJ) currently pending before this Court. *Walton* makes it clear
 4 that "the law will not permit the splitting up into separate suits of different grounds for the same
 5 relief." *Id.*

6 Thus, it appears that the *Walton* case, instead of preventing defendants from removing this
 7 case, serves as authority to bar plaintiff from filing this action based on his own admission that he
 8 has already filed case C07-00037-MJJ which he identifies as "the same case as the present case."
 9 (See Plaintiff's Motion to Remand, 2:13-16, EXHIBIT "E")

10 **C. PLAINTIFF'S INDIGENT STATUS WILL NOT PREVENT HIM FROM
 PURSUING HIS CLAIM IN FEDERAL COURT**

11 Plaintiff asserts that his indigent status will prevent him from litigating his claims in
 12 federal court. Plaintiff is mistaken. The litigation costs for indigent individuals in Federal Court
 13 is no higher than in State Court. In fact, unlike in State Court, there are no fees for filing answers,
 14 motions, and other pleadings once a complaint has been filed. (See Northern California Fee
 15 Schedule, EXHIBIT "F").

16 **D. REMOVAL WAS PROPER UNDER THE LAST SERVED RULE**

17 Removal is proper if conducted within 30 days of the service of any defendant, thus,
 18 defendants have within 30 days of the last served defendant to remove the case to federal court.
 19 *Ford v. Nummi*, 857 F.Supp. 707, 709 (N.D. Cal. 1994). In *Ford*, the court rejects the "first
 20 served" rule and "disagree[d] that the thirty-day removal period under section 1446(b) commences
 21 for all defendants on the date plaintiff initially serves the complaint." *Id.* The Court based its
 22 rejection of the "first served rule" on the fact that (1) nothing in the language or legislative history
 23 of section 1446(b) supports the notion that the decision to remove rests exclusively with the first
 24 served defendant (2) the "unanimity"^{1/} rationale does not logically support the harsh first served

25
 26
 27 ^{1/}The unanimity rule requires that when there is more than one defendant in the action, all
 28 defendants must unanimously agree to join in the removal. *Hewitt v. City of Stanton*, 798 F.2d
 1230, 1232 (9th Cir. 1986).

1 rule and (3) the interests of settling the forum early in the litigation and avoiding forum shopping
 2 do not justify foreclosing subsequently-served defendants of their statutory right to remove an
 3 action. *Id.* at 709-710.

4 It is clear from the Court's ruling in *Ford* that defendants have 30 days after the last
 5 defendant is served to remove their case to federal court. Here, defendants Mike Reed, Dora Ford,
 6 Judith Henderson, Melody Daniel, and Rose Hughes were served on August 14, 2007. Defendants
 7 filed their Notice of Removal on September 12, 2007, which is within the 30 day period required
 8 by section 1446(b). Therefore, removal was proper.

9 Plaintiff cites *Innovacom v. Haynes*, 1998 WL 164933 (N.D. Cal.), as authority for the
 10 "first served rule." Plaintiff argues that the "first served rule" which is used in *Innovacom* should
 11 also be followed in this case, however the facts in *Innovacom* can be easily distinguished from the
 12 facts at hand. In *Innovacom*, plaintiff asserted 28 causes of action, only one of them was federal in
 13 nature. *Id.* at 1. The Court concluded that application of the "first served rule", which acted as a
 14 bar to removal because 30 days had passed since the first defendant was served, created little
 15 possibility of unfairness because only one of plaintiff's 28 causes of action was federal in nature.
 16 *Id.* at 2. The Court identified the harshness of the first served rule and referenced the *Ford* case,
 17 however held that based on the facts in the case the potential for unfairness was not present. *Id.*

18 Unlike in *Innovacom*, all of plaintiff's allegations are based on federal law. Plaintiff's
 19 complaint asserts a Bivens cause of action and makes ten allegations all based on violations under
 20 the US Constitution and federal law. It would be unfair to defendants to prevent them from
 21 removing a case to federal court which is based entirely on federal law. *Ford v. Nummi*, is a
 22 Northern District of California case that has not been overturned which supports a "last served"
 23 application under section 1446. *Ford v. Nummi*, 857 F.Supp. 707 (N.D. Cal. 1994).

24 The Ninth Circuit Court decided not to render a decision on which rule, the first or last
 25 served, is correct. *United States Computer Systems v. ATT*, 298 F.3d 756 (9th Cir. 2002). The
 26 California Practice Guide Federal Civil Procedure Before Trial, notes that the "last served" rule
 27 seems to be the preferable of the two because "until served with process, a defendant has no cause
 28 to consider whether to remove an action to federal court. Thus, a last served defendant's removal

1 right ought not to be waived or affected by an earlier-served defendant's failure to remove." Cal.
 2 Fed. Practice Guide, 2:905.9.

3 **E. FORMAL SERVICE MUST BE EFFECTUATED TO TRIGGER THE 30
 4 DAY PERIOD FOR REMOVAL**

5 Plaintiff suggests that the 30 day period for removal began on May 24, 2007 when he
 6 mailed a copy of the summons to defendants. See Plaintiff's Motion to Remand, 6:8-13,
 7 **EXHIBIT "E".** Plaintiff asserts that if such service was improper, it still satisfied the requires of
 8 1446 because it constituted notice by "service or otherwise." See Plaintiff's Motion to Remand,
 9 6:19-21, **EXHIBIT "E".**

10 The Court in *Murphy Bros. Inc., v. Michetti* addressed the "or otherwise" provision in 28
 11 U.S.C. section 1446 and held that "an individual or entity named as a defendant is not obligated to
 12 engage in litigation unless notified of the action, and brought under a court's authority, by formal
 13 process." *Murphy Bros. Inc., v. Michetti*, 526 U.S. 344, 347 (1999) (emphasis added). "Mere
 14 receipt of the complaint unattended by any formal service" does not trigger a named defendant's
 15 time to remove. *Id.* at 347-348. The phrase "or otherwise" was added to section 1446(b) in 1949
 16 "to govern removal in States where an action is commenced merely by the service of summons,
 17 without any requirement that the complaint be served or filed contemporaneously." *Id.* at 349.

18 Thus, based on the above analysis in *Murphy*, the time for defendants' to remove was not
 19 triggered until each was formally served with process.

20 **F. REMOVAL PROCEDURES WERE PROPERLY FOLLOWED**

21 Defendants filed their Notice of Removal and attached a copy of "all process, pleadings,
 22 and orders served upon such defendant," pursuant to the requires in 28 U.S.C. section 1446(a).
 23 Defendants' Notice of Removal included copies of: plaintiff's compliant filed on January 19,
 24 2007, plaintiff's amended compliant filed on May 15, 2007, and a copy of the summons served by
 25 substituted service on Rose Hughes received on August 17, 2007. Defendants attached the
 26 summons served by substituted service on Rose Hughes because it was the relevant summons that
 27 started the 30 day removal period pursuant to *Ford v. Nummi*. Prior to filing defendants' Notice of
 28 Removal, defendants printed a register of actions on September 10, 2007. Plaintiff's Request for

1 Entry of Default had not yet been filed, and defendants were not aware of its filing prior to
2 submitting their Notice of Removal on September 12, 2007.

3 Plaintiff cites *Kisor v. Collins*, 338 F.Supp.2d 1279 (N.D. ALA 2004) as persuasive
4 authority that plaintiff's Motion to Remand should be granted because defendants failed to attach a
5 copy of all of the defendants' service of process. Defendants are unaware of any authority in this
6 jurisdiction that grants a remand based on failure to attach service of process of all defendants,
7 when at least one, the relevant one to establish the removal timing, is provided.

8 **III. CONCLUSION**

9 Defendants respectfully request that Plaintiffs' Motion to Remand be denied by this
10 Honorable Court for the foregoing reasons.

11 DATED: November 9, 2007

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

13
14 By 
15 ROBERT A. FORD
16 Attorneys for Defendants

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IV.

**DECLARATION OF ROBERT A. FORD IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S MOTION TO REMAND**

I, ROBERT A. FORD, declare the following:

1. I am an attorney duly licensed before all United States District Courts of California.

I am a partner with Lewis Brisbois Bisgaard & Smith, attorneys of record for defendants. I make this declaration of my own personal knowledge and if called to testify I am willing and competent to do so.

2. Attached as **EXHIBIT "A"** is a true and correct copy of a complaint filed by Jordan Rosenberg in the Northern District of the U.S. District Court, entitled Rosenberg v. Cornell Corporation Inc., et. al., Case No. C07-00037-MJJ.

3. Defendants have not been served in case number C07-00037-MJJ and were not aware of its existence until plaintiff filed his Motion to Remand.

4. Attached as **EXHIBIT "B"** is a true and correct copy of the a complaint filed by Jordan Rosenberg in Superior Court of the State of California, in and for the County of San Francisco, entitled Jordan Rosenberg v. Cornell Corporation, Inc., et al., Case No. CGC-07-459757.

5. Attached as **EXHIBIT "C"** is a true and correct copy of the first amended complaint filed by Jordan Rosenberg in Case No. CGC-07-459757, filed on May 15, 2007.

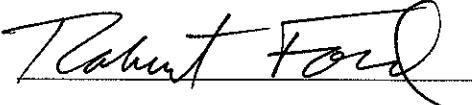
6. Attached as **EXHIBIT "D"** is a true and correct copy of the summons served by substituted service on defendant Rose Hughes, dated August 17, 2007.

7. The summons served on Rose Hughes is the one that defendants use to calculate the 30 day period for which removal was proper.

8. Attached as **EXHIBIT "E"** is a true and correct copy of plaintiff's Motion to Remand filed on November 11, 2007

9. Attached as **EXHIBIT "F"** is a true and correct copy of the Northern California fee schedule for the Northern District of California District Court

1 I declare under the penalty of perjury of the State of California that the foregoing is true
2 and correct. Executed on November 9, 2007, in San Francisco, California.

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5 Robert A. Ford
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LEWIS BRISBOIS BISGAARD & SMITH LLP
ONE SANSOME STREET, SUITE 1400
SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE (415) 362-2580

Exhibit A

1 Jordan Rosenberg
2 601 Van Ness #E3-219
3 San Francisco 94102
4 J94102@yahoo.com
5 Plaintiff
6 In Pro Per

FILED
07 JAN -4 PM 1:45
RICHARD W. WILKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FEDERAL DISTRICT COURT
NORTHERN CALIFORNIA
SAN FRANCISCO

6
C 07 0037

MJJ

15 Jordan Rosenberg,
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17 Plaintiff
18
19 Vs
20
21 Cornell Corporation, Inc,
22 And Associated Companies
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24 Maria Richard, Director,
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26 Mike Reed, Director,
27
28 Dora Ford, Case Manager
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30 Judith Henderson, Job Developer,
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32 Melody Daniel, Job Developer,
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34 Rose Hughes, Staff
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APPLICATION FOR TRO
AND PRELIMINARY
INJUNCTION

Case Number

1 Jurisdiction – The action arises from violations of plaintiff's rights under the US Constitution,
2 federal law, and federal regulations.

3

4 Venue – The events and actions took place in the Northern District of California – in San
5 Francisco.

6

7 Intradistrict Assignment - The events and actions took place in San Francisco.

8

9 The legal authority for the tro, preliminary injunction, and ex parte application is

10 FRCP 65.

11

12 Plaintiff Rosenberg has since 10/24/06 resided at defendant Cornell's halfway house at
13 111 Taylor in San Francisco following his release from federal prison. The other defendants are
14 staff at the halfway house.

15 Rosenberg has attempted to resolve these matters with defendants Cornell and staff all to
16 no avail.

17

FIRST

19 Rosenberg has resided at Cornell halfway house about a month. In that time there was
20 one fire, requiring a response from several fire trucks, and one fire drill. During the fire and the
21 fire drill, Cornell staff evacuated the building and compelled residents to line up along the side of
22 the burning building. Rosenberg has pointed out to Cornell management that this is madness.

1 Rosenberg has requested Cornell management to move staff to a safe location, say, across the
2 street. Cornell refused.

3 Rosenberg, fearing for his safety, asks the Court to order Cornell to keep residents a safe
4 distance from a burning building. Rosenberg will surely prevail at trial because the danger of
5 Cornell's practice to the life and safety of residents is obvious and there is no reason for
6 Cornell's practices. There is nothing that Cornell can weigh against resident safety, particularly
7 since lining up, say, across the street will impose no cost whatsoever on Cornell. If Rosenberg is
8 injured in a fire because of defendants willfully putting him in harm's way the n no
9 compensation can adequately repay Rosenberg for his injuries. The next fire could happen at any
10 time – hence the urgency of the matter.

11 Rosenberg asks the Court to order defendants to find a safer fire practice.

SECOND

When residents arrive at Cornell they are confined to the residence for the first three days. Here days always mean business days unless otherwise noted. Then they are permitted to leave the residence on business days to seek employment and for one hour each calendar day for recreation. Residents who do not find full time employment (40 hours/week) within 15 days are punished in a variety of ways including loss of recreation privileges.

18 When Rosenberg met with Melody Daniel at the beginning of the 15 day period he
19 refused to sign a document that had miscalculated the 15 day period as ending 11/17/06, a
20 Friday. Ms. Daniel was furious and refused to listen to Rosenberg. Later, 11/9/06 Rosenberg
21 wrote to the Job Developer pointing out that 11/10/06 was a holiday and asking for recalculation
22 of the 15 day period. Rosenberg received a written but unsigned acknowledgement, presumably
23 from Melody Daniel but possibly from Judith Henderson, correcting the calculation of his 15 day

1 period and verifying that it ended 11/20/06, a Monday. Nevertheless Rosenberg was denied his
2 recreation hour on 11/19/06 and 11/20/06. Some person had made a handwritten notation on the
3 list of those eligible for recreation next to Rosenberg's name that said "no rec". Rosenberg
4 attempted to explain the situation to staff. He even showed the correcting note to staff. But staff
5 refused to accept it because it was unsigned. Staff, at Rosenberg's request, called Mike Reed
6 who also refused to allow recreation.

7 Rosenberg seeks an order directing that he be allowed the two hourly periods of
8 recreation that he is entitled to and that defendants have denied him. He further asks that Cornell
9 staff be ordered to sign their communications and directives so responsibility is clear.

10 If Rosenberg is not granted his TRO then he will never get the two remaining hours of
11 recreation that he deserves. Rosenberg will be leaving Cornell 1/26/07 if not sooner. While he
12 will still be able to sue for damages, no damages can adequately compensate him for what
13 Cornell has taken. Rosenberg is highly likely to win his case because the defendants have already
14 conceded in writing, although not signed, that his position is correct. The TRO will work no
15 hardship on the defendants because it costs them nothing to grant recreation time and they do so
16 every day for many residents.

THIRD

19 Rosenberg seeks an order from this Court directing defendants to allow Rosenberg to go
20 to the local law libraries available to him to research and prepare his case and to locations where
21 he may have computer access to do online research and type his court documents and to go to
22 court. On Saturday 11/25/06 Rosenberg tried to go to the county law library at 685 Market from
23 9:00am to 12:30. He was permitted to go but only for half that time. He also tried to go Sunday

1 11/26/06 from 2:30pm to 4:00 but this request was denied altogether. He has been denied several
2 more time since then. Mike Reed confirmed in conversation with Rosenberg 11/5/06 that it is
3 Cornell policy to deny these requests. There is no reason for these denials. There are no rules
4 forbidding residents to go to libraries, law or otherwise, nor courts. On these days and time
5 residents are routinely allowed to go to work, to go to look for work, to go to recreation, to shop
6 for hygiene supplies, to attend religious services, and to have various passes and furloughs.
7 Rosenberg asks the Court to order that he be allowed generous time to visit the facilities
8 necessary to prepare his case against defendants and that his requests not be denied except for
9 good cause.

10 Access to the Courts is a fundamental right without which all others cannot be defended.
11 Rosenberg will continue to suffer irreparable harm at the hands of the defendants if he is not
12 allowed to seek legal redress. He will be forced to endure conditions at Corness that violate his
13 civil rights. Rosenberg is likely to prevail in this action where defendants seek to protect
14 themselves against his suit by not allowing him to present his case. There will be no cost to the
15 defendants if Rosenberg is allowed to go to the law libraries and computer services except that
16 they might lose the lawsuit, a consequence against which they may not protect themselves by
17 denying Rosenberg access to the Court.

18

19 NEXT TO LAST

20 Rosenberg seeks a non-retaliation order against the defendants. Defendants have massive
21 control over every aspect of Rosenberg's life. Their opportunities for retaliation are legion. And
22 their ill will is already evident above. Rosenberg seeks an order directing defendants to take no
23 significant actions against Rosenberg without appearing before this Court and showing good

1 cause and giving Rosenberg an opportunity to show why the actions are retaliatory. Actions to
2 which Rosenberg agrees will not be considered retaliatory except where Rosenberg's agreement
3 is coerced.

4

5 LAST

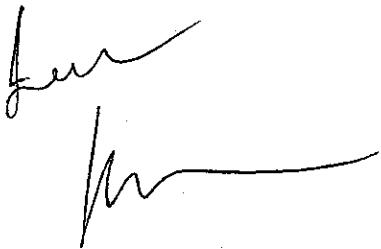
6 Rosenberg asks the Court to appoint counsel to represent Rosenberg in preparing and
7 prosecuting his case which the Court has the discretion to do.

8

9 Rosenberg knows the factual statements herein to be true based on his own experience
10 except where they are based on information and belief and there Rosenberg believes them to be
11 true. Rosenberg's factual statements are made under penalty of perjury. He is willing to so testify
12 in court under oath.

13

14 Respectfully,
15 Jordan Rosenberg, Plaintiff/Petitioner

A handwritten signature in black ink, appearing to read "Jordan Rosenberg", is positioned below the typed name and address.

FILED

07 JAN -4 PM 1:45

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 Jordan Rosenberg
 2 601 Van Ness #E3-219
 3 San Francisco 94102
 4 J94102@yahoo.com
 5 Plaintiff
 6 In Pro Per

7
 8 FEDERAL DISTRICT COURT
 9 NORTHERN CALIFORNIA
 10 SAN FRANCISCO

C 07

0037

MJJ

15 Jordan Rosenberg,

16 Plaintiff

17 Vs

18 Cornell Corporation, Inc,
19 And Associated Companies

20 Maria Richard, Director,

21 Mike Reed, Director,

22 Dora Ford, Case Manager

23 Judith Henderson, Job Developer,

24 Melody Daniel, Job Developer,

25 Rose Hughes, Staff

COMPLAINT;
DEMAND FOR JURY
TRIAL

Case Number

Jurisdiction – The action arises from violations of plaintiff's rights under the US Constitution, federal law, and federal regulations.

Venue – The events and actions took place in the Northern District of California – in San
SCO.

Intradistrict Assignment - The events and actions took place in San Francisco.

Plaintiff Rosenberg has since 10/24/06 resided at defendant Cornell's halfway house at Taylor in San Francisco following his release from federal prison. The other defendants are at the halfway house.

Rosenberg has attempted to resolve these matters with defendants Cornell and staff all to
ii.

This complaint is a “Bivens” action.

FIRST

Rosenberg has resided at Cornell halfway house about a month. In that time there was
fire, requiring a response from several fire trucks, and one fire drill. During the fire and the
evacuation, Cornell staff evacuated the building and compelled residents to line up along the side of
the burning building. Rosenberg has pointed out to Cornell management that this is madness.
Rosenberg has requested Cornell management to move staff to a safe location, say, across the
street. Cornell refused.

While in Cornell's custody while under Cornell's control, Rosenberg has a right to be safe. Cornell, acting under color of law, has, through malice and oppression, violated that

1 right and exhibited deliberate indifference to Rosenberg's safety by requiring him to line up next
2 to a burning building. Rosenberg has been harmed by being made to stand next to a burning
3 building under threat of punishment if he doesn't. Rosenberg seeks compensatory and punitive
4 damages and an end to the offending practices.

5

SECOND

7 When residents arrive at Cornell they are confined to the residence for the first three
8 days. Here days always mean business days unless otherwise noted. Then they are permitted to
9 leave the residence on business days to seek employment and for one hour each calendar day for
10 recreation. Residents who do not find full time employment (40 hours/week) within 15 days are
11 punished in a variety of ways including loss of recreation privileges.

12 When Rosenberg met with Melody Daniel at the beginning of the 15 day period he
13 refused to sign a document that had miscalculated the 15 day period. Ms. Daniel was furious and
14 refused to listen to Rosenberg. Later, 11/9/06 Rosenberg wrote to the Job Developers, Melody
15 Daniel and Judith Henderson, pointing out that 11/10/06 was a holiday and asking for
16 recalculation of the 15 day period. Rosenberg received a written but unsigned acknowledgement,
17 presumably from Melody Daniel but possibly from Judith Henderson, correcting the calculation
18 of his 15 day period and verifying that it ended 11/20/06. Nevertheless Rosenberg was denied his
19 recreation hour on 11/19/06 and 11/20/06. Some person had made a handwritten notation on the
20 list of those eligible for recreation next to Rosenberg's name that said "no rec". One defendant
21 told Rosenberg the note was written by Dora Ford. Rosenberg attempted to explain the situation
22 to staff. He even showed the correcting note to staff. But staff refused to accept it because it was
23 unsigned. Staff, at Rosenberg's request, called Mike Reed who also refused to allow recreation.

1 While Rosenberg is under Cornell's control he has a due process right to be treated in
2 accordance with regulations. Cornell's willful refusal, resulting from malice and oppression,
3 acting under color of law, to follow its own and the Bureau of Prisons' regulations have harmed
4 Rosenberg by denying him access to deserved recreation despite knowing that their actions are
5 inconsistent with regulations. Rosenberg seeks restitution, compensatory and punitive damages,
6 and an end to the offending practices.

7

THIRD

9 On Saturday 11/25/06 Rosenberg tried to go to the county law library at 685 Market from
10 9:00am to 12:30. He was permitted to go but only for half that time. He also tried to go Sunday
11 11/26/06 from 2:30pm to 4:00 but this request was denied altogether. There is no reason for
12 these denials. There are no rules forbidding residents to go to libraries, law or otherwise. On
13 these days and time residents are routinely allowed to go to work, to go to recreation, to shop for
14 hygiene supplies, and to attend religious services. On 11/30/06 Dora Ford told Rosenberg that
15 this was being done because that's the way Maria Richard has always done it. Rosenberg has
16 been denied access to the law library on many subsequent occasions.

17 Access to the Courts is a fundamental right without which all others cannot be defended.
18 As a result of their malice and oppression, Defendants, acting under color of law, willfully
19 denied Rosenberg the exercise of this right. Rosenberg seeks compensatory and punitive
20 damages and an end to the offending practices.

21

FOURTH

1 Rosenberg asks the Court to appoint counsel to represent Rosenberg in preparing and
2 prosecuting his case which the Court has the discretion to do.

3 Rosenberg asks leave of this Court to amend his complaint after he has had an
4 opportunity to further research preparation of complaints.

5 Rosenberg requests a jury trial.

6

7 RELIEF

8 Rosenberg seeks:

9 Restitution

10 Compensatory damages

11 Punitive damages

12 Declaratory relief

13 Injunctive relief

14 Any other relief the Court may find fit to provide.

15

16 Rosenberg knows the factual statements herein to be true based on his own experience
17 except where they are based on information and belief and there Rosenberg believes them to be
18 true. Rosenberg's factual statements are made under penalty of perjury. He is willing to so testify
19 in court under oath.



20 Respectfully,

21 Jordan Rosenberg

22 Plaintiff/Petitioner

23

Exhibit B

FILED
San Francisco County Superior Court

JAN 19 2007

GORDON PARK-LI, Clerk

Deputy Clerk

CASE MANAGEMENT CONFERENCE SET FOR JUN 22, 2007

2 Jordan Rosenberg
 3 601 Van Ness #E3-219
 4 San Francisco 94102
 5 j94102@yahoo.com
 6 Plaintiff
 7 In Pro Per

JUN 22 2007 - 9:00 AM

DEPARTMENT 212

NO SUMMONS ISSUED

9 SUPERIOR COURT OF CALIFORNIA
 10 COUNTY OF SAN FRANCISCO CGC07- 459757

11
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 14
 15 Jordan Rosenberg,
 16 Plaintiff
 17 Vs
 18 Cornell Corporation, Inc,
 19 And Associated Companies
 20 Maria Richard, Director,
 21 Mike Reed, Director,
 22 Dora Ford, Case Manager
 23 Judith Henderson, Job Developer,
 24 Melody Daniel, Job Developer,
 25 Rose Hughes, Staff

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COMPLAINT; *FUD DATA INC*
 DEMAND FOR JURY
 TRIAL *FUD CIVIC*
 Case Number *REG-1475*
VIO CATER

Venue – The events and actions took place in San Francisco.

Plaintiff Rosenberg has since 10/24/06 resided at defendant Cornell's halfway house at

4 111 Taylor in San Francisco following his release from federal prison. The other defendants are
5 staff at the halfway house.

6 Rosenberg has attempted to resolve these matters with defendants Cornell and staff all to
7 no avail.

8 This complaint, a "Bivens" action, arises from violations of plaintiff's rights under the
9 US Constitution, federal law, and federal regulations

10

11 FIRST

12 Rosenberg has resided at Cornell halfway house about a month. In that time there was
13 one fire, requiring a response from several fire trucks, and one fire drill. During the fire and the
14 fire drill, Cornell staff evacuated the building and compelled residents to line up along the side of
15 the burning building. Rosenberg has pointed out to Cornell management that this is madness.
16 Rosenberg has requested Cornell management to move staff to a safe location, say, across the
17 street. Cornell refused.

18 While in Cornell's custody while under Cornell's control, Rosenberg has a right to be
19 kept safe. Cornell, acting under color of law, has, through malice and oppression, violated that
20 right and exhibited deliberate indifference to Rosenberg's safety by requiring him to line up next
21 to a burning building. Rosenberg has been harmed by being made to stand next to a burning
22 building under threat of punishment if he doesn't. Rosenberg seeks compensatory and punitive
23 damages and an end to the offending practices.

SECOND

3 When residents arrive at Cornell they are confined to the residence for the first three
4 days. Here days always mean business days unless otherwise noted. Then they are permitted to
5 leave the residence on business days to seek employment and for one hour each calendar day for
6 recreation. Residents who do not find full time employment (40 hours/week) within 15 days are
7 punished in a variety of ways including loss of recreation privileges.

8 When Rosenberg met with Melody Daniel at the beginning of the 15 day period he
9 refused to sign a document that had miscalculated the 15 day period. Ms. Daniel was furious and
10 refused to listen to Rosenberg. Later, 11/9/06 Rosenberg wrote to the Job Developers, Melody
11 Daniel and Judith Henderson, pointing out that 11/10/06 was a holiday and asking for
12 recalculation of the 15 day period. Rosenberg received a written but unsigned acknowledgement,
13 presumably from Melody Daniel but possibly from Judith Henderson, correcting the calculation
14 of his 15 day period and verifying that it ended 11/20/06. Nevertheless Rosenberg was denied his
15 recreation hour on 11/19/06 and 11/20/06. Some person had made a handwritten notation on the
16 list of those eligible for recreation next to Rosenberg's name that said "no rec". One defendant
17 told Rosenberg the note was written by Dora Ford. Rosenberg attempted to explain the situation
18 to staff. He even showed the correcting note to staff. But staff refused to accept it because it was
19 unsigned. Staff, at Rosenberg's request, called Mike Reed who also refused to allow recreation.

20 While Rosenberg is under Cornell's control he has a due process right to be treated in
21 accordance with regulations. Cornell's willful refusal, resulting from malice and oppression,
22 acting under color of law, to follow its own and the Bureau of Prisons' regulations have harmed
23 Rosenberg by denying him access to deserved recreation despite knowing that their actions are

1 inconsistent with regulations. Rosenberg seeks restitution, compensatory and punitive damages,
2 and an end to the offending practices.

3

4 **THIRD**

5 On Saturday 11/25/06 Rosenberg tried to go to the county law library at 685 Market from
6 9:00am to 12:30. He was permitted to go but only for half that time. He also tried to go Sunday
7 11/26/06 from 2:30pm to 4:00 but this request was denied altogether. There is no reason for
8 these denials. There are no rules forbidding residents to go to libraries, law or otherwise. On
9 these days and time residents are routinely allowed to go to work, to go to recreation, to shop for
10 hygiene supplies, and to attend religious services. On 11/30/06 Dora Ford told Rosenberg that
11 this was being done because that's the way Maria Richard has always done it. Rosenberg has
12 been denied access to the law library on many subsequent occasions.

13 Access to the Courts is a fundamental right without which all others cannot be defended.
14 As a result of their malice and oppression, Defendants, acting under color of law, willfully
15 denied Rosenberg the exercise of this right. Rosenberg seeks compensatory and punitive
16 damages and an end to the offending practices.

17

18 **FOURTH**

19 Rosenberg requests a jury trial.

20

21

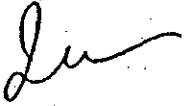
22

23

1 RELIEF

2 Rosenberg seeks:
3 Restitution
4 Compensatory damages
5 Punitive damages
6 Declaratory relief
7 Injunctive relief
8 Any other relief the Court may find fit to provide.

9
10 Rosenberg knows the factual statements herein to be true based on his own experience
11 except where they are based on information and belief and there Rosenberg believes them to be
12 true. Rosenberg's factual statements are made under penalty of perjury. He is willing to so testify
13 in court under oath.

14  Respectfully,

15 Jordan Rosenberg

16  Plaintiff/Petitioner

17

Exhibit C

1 Jordan Rosenberg
2 601 Van Ness #E3-219
3 San Francisco 94102
4 J94102@yahoo.com
5 Fax 206-203-4321
6 Plaintiff
7 In Pro Per
8
9

ENDORSED
FILED
San Francisco County Superior Court

MAY 15 2007

GORDON PARKER, Clerk
BY WESLEY BAKER
DEBORA GARCIA

10
11
12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO

14 Jordan Rosenberg,
15 Plaintiff
16 Vs
17
18 Cornell Corporation, Inc,
19 And Associated Companies
20
21 Maria Richard, Director,
22
23 Mike Reed, Director,
24
25 Dora Ford, Case Manager
26
27 Judith Henderson, Job Developer,
28
29 Melody Daniel, Job Developer,
30
31 Rose Hughes, Staff,
32
33 Does 1-100,
34
35 Defendants
36
37

COMPLAINT (FIRST AMENDED)
FOR CIVIL RIGHTS VIOLATIONS

Case Number CGC-07-459757

Venue – The events and actions took place in San Francisco.

Plaintiff Rosenberg at all relevant times resided at defendant Cornell's halfway house at

3 111. Taylor in San Francisco 94102 following his release from federal prison. The other

4 defendants are staff at the halfway house. The authority held by defendants over plaintiff was

5 delegated by virtue of their employment by or contract with federal agencies and so they acted

⁶ under color of law.

Rosenberg has attempted to resolve these matters with defendants Cornell and staff all to

8 no avail. Rosenberg has brought complaints about staff action to management and/or supervisors

9 who have in every case refused to aid Rosenberg.

10 This complaint, a "Bivens" action, arises in part from violations of plaintiff's rights under

¹¹ the US Constitution, federal law, and federal regulations. (Bivens v. Six unknown fed. narcotics

¹² agents, 403 U.S. 388 (1971)).

For each claim, defendants acted willfully with oppression, fraud, and malice.

14 All the facts alleged in any part of this complaint are incorporated in every other part of

15 the complaint.

16 Plaintiff will amend this complaint with the names of the Doe defendants as they become

17 known

18

1

FIRST

2 While residing at Cornell halfway house, Plaintiff Rosenberg was forbidden to leave the
3 house without permission. Rosenberg sought the permission of Defendant Dora Ford to go to the
4 law library to research and prepare a complaint and application for tro/preliminary injunction to
5 correct violations of Rosenberg's rights detailed below. Ford sometimes completely refused,
6 sometimes severely limited Rosenberg's access to the law library. Ford similarly limited
7 Rosenberg's visits to the court. Rosenberg applied to defendants Richard and Reed to overrule
8 Ford. They refused. There was no rule or regulation limiting Rosenberg's access to the law
9 library.

10 Defendants actions deprived Rosenberg of access to the courts, a basic civil right. As a
11 result Rosenberg was not able to file a timely case thus forever denying Rosenberg remedies that
12 would otherwise have been available to him.

13

SECOND

14 During two actual fires, where the local fire department was called and responded, and
15 two fire drills, defendants required that plaintiff Rosenberg line up along side the burning
16 building. This is an unsafe practice that put Rosenberg's life at risk without reason. Defendants
17 ignored Rosenberg's protest about this practice.

18

As a result of defendant's actions Rosenberg's life was pointlessly put at risk.

1 Rosenberg has a right to be protected from needless risks to his life caused by Defendants, a right
2 that was violated by defendant's actions.

3 **THIRD**

4 On one occasion that turned out to be a fire drill, and not an actual fire, a fact then
5 unknown to Rosenberg, Rosenberg attempted to protect himself from proximity to the burning
6 building by moving away from it. Defendant Hughes filed a complaint about Rosenberg's action
7 that resulted in his being punished for his action to protect his life. Punishing Rosenberg for
8 actions to protect his life when defendants have put his life needlessly at risk is a violation of
9 Rosenberg's civil rights.

10 **FOURTH**

11 Rosenberg was given 10 hours of punishment duties (above). After he performed those
12 duties, defendant Reed assigned Rosenberg additional punishment duties. When Rosenberg told
13 Reed that he had completed his punishment duties Reed told Rosenberg that this didn't count
14 because the performance of the duties had not been recorded in defendant's records. Rosenberg
15 had not been told anything about such recording and in any case could not compel staff to make
16 such records. Reed required Rosenberg to perform additional duties and then refused to record
17 them, too.

18 Arbitrary and unlimited punishment by defendants is a denial of Rosenberg's civil rights.

19

1

FIFTH

2 Cornell confiscated Rosenberg's medicines. Rosenberg asked for their immediate return.
3 Rosenberg needed the medicines and there was no reason for Cornell to keep them from him.
4 Defendant Reed instructed staff to ignore Rosenberg's request and to return the medicines "at
5 your leisure". Rosenberg received the medicines 10 days later.

6 Denying Rosenberg medical care is a violation of his civil rights.

7

SIXTH

8 Rosenberg was housed in a room with bedbugs. Cornell took no timely action to free the
9 facility of bedbugs. When Rosenberg attempted to use bug spray to kill the bedbugs, Cornell
10 confiscated the bug spray. Cornell violated Rosenberg's right to live in a clean facility free of
11 bedbugs.

12

SEVENTH

13 Cornell residents are confined to the facility except for specific occasions and
14 permissions to leave. For a period of weeks Rosenberg was entitled to one hour a day of
15 recreation time. Defendants Henderson and Daniel miscalculated Rosenberg's recreation days
16 and together with defendant Ford denied Rosenberg two hours of recreation. Henderson and
17 Daniel refused to correct their calculation when advised of it by Rosenberg. When Rosenberg
18 called this to the attention of defendant Reed he ignored Rosenberg's claims and denied

- 1 Rosenberg his recreation time. Rosenberg has a right to be treated according to house rules and
- 2 to be treated as other residents are. These rights were violated by defendants.

3 **EIGHTH**

- 4 Cornell residents are required to find employment for 40 hours per week while in
- 5 residence at Cornell. Cornell receives 25% of the gross paycheck of every resident. Cornell
- 6 punishes residents who fail to find such employment.

- 7 Defendants Henderson and Daniel, staff job developers, have the specific responsibility
- 8 to assist residents in finding employment. These defendants hindered Rosenberg in his
- 9 employment search by refusing to allow him to go the library to review newspaper employment
- 10 ads or to use library internet computers to search for employment ads. There are no newspapers
- 11 or internet computers available at Cornell. These defendants kept secret the identities of
- 12 employers that commonly hire Cornell residents until, late in the game, Rosenberg was able to
- 13 obtain them. Target, in particular, was hiring Cornell residents for extra holiday staff. By the
- 14 time Rosenberg got this information from defendants Target had completed its hiring.

- 15 As a result of defendants actions Rosenberg was not able to find 40 hour per week
- 16 employment although he did find two part time jobs. Rosenberg was punished by Cornell for not
- 17 meeting their employment requirements. Rosenberg has a right to receive all the assistance that
- 18 staff can provide and to receive the same assistance made available to other residents. This right
- 19 was violated by defendants.

1 NINETH

2 Rosenberg applied to defendant Ford for permission to purchase hygiene items (soap,
3 toothpaste, vitamins, etc). Ford repeatedly denied Rosenberg's requests. Rosenberg, like other
4 Cornell residents, has the right to purchase basic necessities not supplied by Cornell. Ford's
5 refusal, without reason, to allow Rosenberg to make these purchases is a violation of Rosenberg's
6 rights.

7 TENTH

8 Cornell has repeatedly treated Rosenberg in an arbitrary manner not prescribed by rules
9 and regulations and not consistent with the treatment accorded other residents. Arbitrary
10 treatment is a violation of Rosenberg's rights.

11 RELIEF

12 Rosenberg seeks:

13 Restitution
14 Compensatory damages
15 Punitive damages
16 Combined monetary relief not less than \$10,000,000.00
17 Declaratory relief
18 Injunctive relief
19 Any other relief the Court may find fit to provide.

1

2 Rosenberg knows the factual statements herein to be true based on his own experience
3 except where they are based on information and belief and there Rosenberg believes them to be
4 true. Rosenberg's factual statements are made under penalty of perjury. He is willing to so testify
5 in court under oath.

6 Respectfully,

7 Jordan Rosenberg

8 Plaintiff/Petitioner

9

Exhibit D

Sheriff's File

07-344824

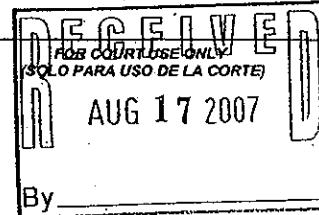
SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT: (Aviso a Acusado)

Cornell Corporation INC & ASSOCIATES COMPANY INC
 Maria Richard *DIRECTOR*
 Mike Reed *DIRECTOR*
 Dora Ford *CFO & MANAGER*
 Judith Henderson *TOB ORGANIZER*
 Melody Daniel *TOB ORGANIZER*
 Rose Hughes *STAFF*

YOU ARE BEING SUED BY PLAINTIFF:**(A-Ud. le está demandando)**

Jordan Rosenberg



You have **30 CALENDAR DAYS** after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de **30 DIAS CALENDARIOS** para presentar una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

The name and address of the court is: *(El nombre y dirección de la corte es)*

SF SUPERIOR COURT
 400 McALLISTER
 SF 94102

CASE NUMBER: *(Número del Caso)*

CGC-07-459757

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: *(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)*

Jordan Rosenberg, 601 Van Ness E3-219, San Francisco 94102
 phone and fax 206-203-4321, J94102@Yahoo.com

DATE: **MAY 10 2007**
 (Fecha)**Gordon Park-Li**Clerk, by _____
 (Actuario)BERNADETTE THOMPSON, Deputy
 (Delegado)**NOTICE TO THE PERSON SERVED: You are served**

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify): _____
3. on behalf of (specify): _____

under: CCP 416.10 (corporation)
 CCP 416.20 (defunct corporation)
 CCP 416.40 (association or partnership)
 other: _____

CCP 416.60 (minor)
 CCP 416.70 (conservatee)
 CCP 416.90 (individual)

4. by personal delivery on (date): _____

(See reverse for Proof of Service)
SUMMONS

Stratton Press

CCP 412.20

Exhibit E

1 Jordan Rosenberg
2 601 Van Ness #E3-239
3 San Francisco 94102
4 J94102@yahoo.com
5 Fax 206-203-4321
6 Plaintiff In Pro Per

7

8

9

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16
17 FEDERAL DISTRICT COURT
18 NORTHERN CALIFORNIA
19 SAN FRANCISCO
20
21
22

23 Jordan Rosenberg,
24 Plaintiff
25
26 Vs
27
28 Cornell Corporation, Inc,
29 And Associated Companies,
30
31 Maria Richard, Director,
32
33 Mike Reed, Director,
34
35 Dora Ford, Case Manager,
36
37 Judith Henderson, Job Developer,
38
39 Melody Daniel, Job Developer,
40
41 Rose Hughes, Staff,
42
43 Defendants
44

MOTION FOR REMAND:
SUPPORTING BRIEF

Case Number 3:07-CV-04690-PJH

Judge Hamilton, Courtroom 3

time: 9 am date: 12/5/07

1

MOTION FOR REMAND: SUPPORTING BRIEF

2

3 The Court should remand this case to the State Court from which it was removed for the
 4 following reasons:

5

6 1. THERE IS NO SUBJECT MATTER JURISDICTION. THE COURT MUST
 7 REMAND.

8 1.1 Rosenberg calls the Court's attention to case C07-00037-MJJ, Federal District Court,
 9 Northern California, San Francisco. The case was filed 1/4/07. The filing consisted of a
 10 Complaint, an Application for TRO and Preliminary Injunction, a Proposed Order, and an
 11 Application to Proceed in Forma Pauperis. There is also an order from the Court issued 1/4/07
 12 denying both applications. The case is still current.

13 1.2 The parties are the same as in the present case.

14 1.3 The facts alleged are essentially the same as in the present case.

15 1.4 The legal basis for the case is the same as the present case.

16 1.5 It is the same case as the present case.

17 1.6 The Court ruled, in its order of 1/4/07, that there was no subject matter jurisdiction in
 18 this case. Now Defendants may disagree. The Court may disagree. Even, who knows, the
 19 Plaintiff may disagree. None of this matters. What matters is that res judicata and collegiality
 20 require that the Court honor the ruling of 1/4/07. There is no subject matter jurisdiction. The
 21 Court has so ruled.

22 1.7 The Defendants may wish to appeal that ruling. This is the wrong forum to do so.

23 Where, as here, there is no subject matter jurisdiction, the Court must remand.

24

25 2. THE SAME CLAIMS MAY NOT BE THE SUBJECT OF MORE THAN
 26 ONE ACTION IN THE SAME COURT.

27 2.1 Consider Walton v. UTV, 776 F.Supp. 1399 (1991 N.D.Cal): "Well established federal
 28 and California law forbid plaintiff from splitting a single claim for relief against defendants by
 29 making it the subject of more than one action in the same court.... The duplicate Title VII claim

1 filed in Walton II should, for purposes of sorting out the federal-state jurisdictional questions,
2 be deemed a nullity, as the claim is already contained in the vessel of Walton I."

3 2.2 Removal of the present case would create a duplicate case in the same Federal Court.
4 One is enough. Remand is called for.

5

6 3. ROSENBERG CANNOT PROSECUTE HIS CASE IN THIS FEDERAL
7 DISTRICT COURT. IF HE CANNOT PROCEED IN STATE COURT HIS
8 CLAIMS CANNOT BE HEARD ANYWHERE.

9 3.1 Rosenberg is indigent. His indigent status has been recognized by the State Court which
10 is what makes it possible for him to prosecute his case there. In the 1/4/07 ruling(above) he was
11 denied indigent status for this case. Accordingly, he is financially unable to proceed. To
12 remove this case today is to dismiss it tomorrow for inaction.

13 3.2 Rosenberg has a fundamental right of access to the courts. Removing this case from
14 State to Federal Court will deny him that right. Accordingly, the case should be remanded.

15

16 4. DEFENDANTS ATTEMPT AT REMOVAL IS NOT VALID BECAUSE IT
17 DOES NOT MEET THE 30 DAY REQUIREMENT OF 28 USC sec 1446(b)

18 4.1 Two defendants, Cornell Corporation and Maria Richard, were served with the
19 Summons and Complaint not later than 8/6/07 and the remaining seven defendants were served
20 not later than 8/14/07 (Notice of Removal, para 4). Proof of Service for all defendants by the
21 Sheriff of San Francisco County is on file with the State Court. Defendants filed their notice of
22 removal in this Court on 9/12/07.

23 4.2 The procedure for removal is given in 28 USC sec 1446, section (b) of which requires
24 the notice of removal to be filed within 30 days after receipt by the defendant of a copy of the
25 complaint. Here, the defendant received both the summons and complaint not later than 8/6/07.
26 From 8/6/07 to 9/12/07 is more than 30 days. Accordingly, defendants action is untimely and
27 the case should be remanded to the Court from which it came.

28 4.3 "The right to remove a state court action to federal court ... [must] be invoked in strict
29 conformity with statutory requirements." ... "[F]ederal courts construe the removal statute

1 narrowly, resolving any doubts against removability." (Roy A. Somlyo v. J. Lu-Rob
 2 Enterprises, Inc., 932 F.2d 1043 (1991 2nd Cir.) Here, statutory requirements prevent removal
 3 and point plainly toward remand.

4

5.. DEFENDANTS SEARCH FOR SHELTER FROM THE 30 DAY
 6 REQUIREMENT IN THE SHADE OF THE SO-CALLED "LAST SERVED"
 7 RULE FAILS AND REMAND REMAINS APPROPRIATE.

8 5.1 This case involves multiple defendants served on different days. Defendants assert that
 9 the 30 day period for removal begins on the day the last defendant was served. Defendants cite
 10 Ford v. NUMMI, 857 F.Supp. 707 (N.D. Cal. 1994) in support of this "last served" rule. In fact,
 11 the phrase "last served rule" does not appear in Ford. But the phrase "first served rule" does.

12 5.2 Here is what the Defendants' own case (Ford) has to say: "the majority of published
 13 decisions have found that in multi-defendant actions, the thirty-day time period for removal
 14 commences for all defendants when service is accomplished on the first-served defendant.

15 Once that thirty-day window of time for removal lapses, all defendants are barred from
 16 removing the action". (Ford) The case lists a sampling of those opinions. The weight of legal
 17 opinion supports Rosenberg's view that the Defendants' attempted removal was untimely and
 18 remand is appropriate.

19 5.3 Still, Ford did make an exception and follow a so-called "last served rule". That is at
 20 best persuasive authority. But not very persuasive. It failed to persuade the Court, a colleague,
 21 in Innovacom v. Haynes, 1998 U.S. Dist. LEXIS 23111 (1998 N.D.Cal) "The majority rule,
 22 and the rule to be followed here, provides that the 30-day removal period begins to run for all
 23 defendants from the date the first of them receives the original complaint."

24 5.4 That the majority of relevant cases support Rosenberg's position is affirmed in United
 25 Computer Systems v. ATT, 298 F.3d 756 (2002 9th Cir.) Here, the Ninth Circuit chose to
 26 render no decision on which rule, first or last served, is correct. It has never done so nor has the
 27 U.S. Supreme Court.

28 5.5 Courts tend to stray from the "first served rule" when the rule would be unfair to the
 29 defendants. In United Computer Systems one defendant was improperly joined. There the

1 Court was worried that some defendants would lose their right to remove the case before they
 2 were even aware the case existed. In Ford, the Court was peeved at a practice guide, "Federal
 3 Civil Procedure Before Trial", which seemed to recommend serving the defendant least likely
 4 to remove before serving the others so as to manipulate the removal process.

5 5.6 This case is distinguished from those cases. Here there is no unfairness to the
 6 Defendants. Rosenberg never attempted to gerrymander service. The two defendants served
 7 first are the employer and boss of the remaining five defendants. The five knew or should have
 8 known about the case at the same time as the two. All defendants have the same attorney. The
 9 attorney didn't start work on the case any later for the five than for the two. There has been no
 10 harm to any defendant. The defendants have claimed no harm and it is too late for them to raise
 11 such claim. There is no reason to depart from majority legal opinion that the "first served rule"
 12 is correct. This case should be remanded to State Court.

13

14 6. DEFENDANTS' FILINGS ARE INCOMPLETE, HENCE INVALID, AND
 15 JUSTIFY REMAND

16 6.1 Rosenberg filed a "Request for Entry of Default" in State Court and served same upon
 17 Defendants before Defendants filed their "Notice of Removal". Defendants have not included a
 18 copy of that Request along with their Notice as required by 28 USC sec 1446(a) ("together
 19 with a copy of all process, pleadings, and orders served upon such defendant.... ") Furthermore,
 20 Defendants have supplied a copy of the Summons served on one Defendant but not the
 21 Summons served on all the others.

22 6.2 Defendants have not complied with FRCP sec 7.1(a and b).

23 6.3 Defendants have not supplied Rosenberg with the required ADR brochure nor Case
 24 Management Statement.

25 6.4 Remand may be requested for "any defect" in removal filing (28 USC sec 1447(c)).

26 6.5 Defendants may not amend their filing because the 30 day limit for their filing has
 27 passed.

28 6.6 The requirements of 28 USC sec 1446(a) are mandatory and jurisdictional according to
 29 Kisor v. Collins, 338 F.Supp.2d 1279, (N.D. ALA 2004) a case where, as here,

1 defendant/removers failed to follow 28 USC sec 1446(a) by not supplying specified documents
2 along with their removal filing. The Court construed the statute strictly against the removing
3 parties, as it should. Their case was remanded. This case should be, too.

4

5 7. ALL DEFENDANTS WERE SERVED WITH SUMMONS AND
6 COMPLAINT ON MAY 24, 2007, REMOVAL IS NOT TIMELY,
7 REMAND IS APPROPRIATE.

8 7.1 Rosenberg served all defendants by mailing to each on 5/24/07 a copy of the Summons,
9 the First Amended Complaint, the ADR materials, two copies of a Notice of Receipt and
10 Acknowledgment, and a stamped, self addressed envelope according to the procedures of
11 California CCP sec 415.30 et seq for service of process. Had defendants returned their Notices,
12 service would have then been complete. Since none did, Rosenberg took further steps to
13 complete the service of process.

14 7.2 Defendants filed their Notice of Removal about three and a half months after they
15 received the Summons and Complaint. Their removal was untimely. The case deserves to be
16 remanded.

17 7.3 Defendants will claim the 30 day clock should not start to run until service is complete.
18 There is one statute and two cases that say otherwise.

19 7.4 First, 28 USC sec 1446(b) says the clock starts "after the receipt by the defendant,
20 through service or otherwise" of the complaint and summons. Rosenberg contends (below) that
21 his mailing constitutes service, but, if not, it certainly constitutes "otherwise".

22 7.5 Second, in Lofstrom v Dennis, 829 f supp 1194 (1993 N.D.Cal) the Court held that
23 incomplete or defective service was sufficient to start the 30 day clock. "The central question
24 presented by this motion is the proper interpretation of the 'or otherwise' language in *Section*
25 *1446(b)*, specifically whether to start the 30 day removal period upon actual receipt of the
26 complaint or upon completion of formal service.... After an examination of the relevant case
27 law, this Court is of the opinion that the better-reasoned position is to hold that the 30 day
28 period begins to run upon *actual receipt* of the initial complaint." (Lofstrom)

1 7.6 Third, there is Murphey v. Michetti, 526 US 344 (1999). There the Plaintiff faxed a
 2 copy of the complaint only, no summons, to the Defendant. The Court said this wasn't enough
 3 because it gave the Defendant no notice of when he must appear and defend. The present case
 4 is different because both summons and complaint were mailed to all Defendants.

5 7.7 Murphey held as follows:

6 a named defendant's time to remove is triggered by:

7 (1) simultaneous service of the summons and complaint, or
 8 (2) receipt of the complaint, "through service or otherwise," after and apart from service of the
 9 summons,

10 (3) but not by mere receipt of the complaint unattended by any formal service.

11 7.8 While Murphey said that (1) or (2) triggered the defendant's time to remove, nowhere
 12 does it say that only (1) or (2) may do that. Rosenberg contends that mailing the summons and
 13 complaint serves as well. Note that this mailing is not excluded by (3) because there was more
 14 than mere receipt of the complaint (there was receipt of the summons, too) and it was attended
 15 by formal service outlined in California CCP sec 415.30 et seq.

16 7.9 Finally, even though the Defendants did not acknowledge receipt of the mailed
 17 summons and complaint - indeed precisely because they did not - service, as that term was
 18 understood in Murphey, was effected. Regarding service, Murphey said "Unless a named
 19 defendant agrees to waive service, [service of] the summons continues to function as the sine
 20 qua non directing an individual or entity to participate in a civil action or forgo procedural or
 21 substantive rights." [bracketed words added] Here, mailing the summons and complaint,
 22 unacknowledged by Defendants, with nothing further from the Plaintiff, caused the Defendants
 23 to lose substantive rights. CCP sec 415.30(d) provides that the Defendant who does not
 24 acknowledge receipt must pay the Plaintiff any costs incurred by Plaintiff who must take
 25 further steps to complete service. And this is true regardless of whether Plaintiff is otherwise
 26 able to recover costs in the case. Because the mailing caused the Defendants to lose substantive
 27 rights, the mailing constituted a service under Murphey. Accordingly, service was effected
 28 5/24/07, the Defendants' removal is untimely, and remand is warranted.

29

1 CONCLUSION

2 The removal statutes are construed strictly and to limit removal. Any defect in removal
3 effort is grounds for remand. Any doubts are resolved in favor of remand.

4 Remand is generally not reviewable. A finding of jurisdiction is.

5 Rosenberg has provided more than ample grounds for remand.

6 Rosenberg requests remand.

7 Rosenberg requests costs and expenses under 28 USC 1447(c) and that this award
8 appear in the order to remand.

9 If the Court denies this request for remand then Rosenberg requests the Court to
10 authorize interlocutory appeal under 28 USC 1292(b) in its order.

11

12

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A handwritten signature in black ink, appearing to read "Jordan Rosenberg", is positioned above the typed name and title.

Respectfully submitted,
Jordan Rosenberg
Plaintiff/Petitioner

Exhibit F



Frequently Asked Questions (FAQ)

Question:

What are the various fees in this Court?--Fee Schedule 7/6/06

Answer:



FeeSchedSum-7-06.wpd

Please note that, unlike State Court, there is no fee for filing answers, motions, and other pleadings once the complaint has been filed.

This table represents fees effective 7/06/06 - Changes from 4/06 are for PACER fees

Civil Case filing fee	\$350.00
Notice of Appeal filing fee	\$455.00
Habeas Corpus petition filing fee	\$5.00
Filing fee for civil action brought under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (this fee is in addition to \$350 civil case filing fee)	\$5431.00
Filing or indexing any document not in a case or proceeding for which a filing fee has been paid (miscellaneous matter)	\$39.00
For every search of the records, per name or item searched (this fee shall be applicable to the United States if the information requested is available through electronic access)	\$26.00
For every search of court records conducted by the PACER Service Center	\$26.00
For certification of any document, whether made directly on the document or by separate instrument	\$9.00
For exemplification of any document or paper	\$18.00

For reproducing any record or paper, per page, whether from original documents or from microfiche or microfilm reproductions of original records (this fee shall apply to services rendered on behalf of the United States if the record or paper is available through electronic access)	\$.50
For printing copies of any record or document accessed electronically at a public terminal in the courthouse (this fee shall apply to services rendered on behalf of the United States if the record requested is remotely available through electronic access)	\$.10
For reproduction of recordings of proceedings, including cost of materials	\$26.00
For retrieval of a record from the Federal Records Center or National Archives	\$45.00
For a check paid into the court which is returned for lack of funds	\$45.00
For an appeal to a district judge from a judgment of conviction by a magistrate judge in a misdemeanor case	\$32.00
Power of attorney fee (per attorney, per company)	\$39.00
For admission of attorney to practice, including Certificate of Admission	\$210.00
For admission of an attorney pro hac vice	\$210.00
For a duplicate Certificate of Admission or Certificate of Good Standing	\$15.00
For remote electronic access to court records via a federal judiciary Internet site, per page, with the total fee per document not to exceed the fee for 30 pages, (Note: the electronic access fee shall apply to the United States; the 30-page fee limit shall not be applicable to transcripts of federal court proceedings; and, no fee will be charged to view documents at the courthouse.)	\$.08

The Clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

Note: Fees are authorized by Title 28, USC, Sec. 1914 and Civil L.R. 11-1(d) and 11-3(c). Complete texts of federal court fee schedules are available at:
<http://www.uscourts.gov/library/courtfee.html>

The Clerk's Office can only accept payment by exact change or check made payable to "Clerk, US District Court".

While the information presented above is accurate as of the date of publication, it should not be cited or relied upon as legal authority. It is highly recommended that legal advice be obtained from an attorney or legal association. For filing requirements, please refer to the Federal Rules of Civil Procedure, Federal Rules of Evidence, US Code, Federal Rules of Criminal Procedure, Code of Federal Regulations, and the Local Rules for the Northern District of California .